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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------------|------------------|
| 10/693,617   | 10/24/2003  | Mark F. Bares        | M297.12-0283                    | 6470             |
| 27367 7590 01/08/2007<br>WESTMAN CHAMPLIN & KELLY, P.A.<br>SUITE 1400<br>900 SECOND AVENUE SOUTH<br>MINNEAPOLIS, MN 55402-3319 |             |                      | EXAMINER<br>UNDERWOOD, DONALD W |                  |
|  |             |                      | ART UNIT                        | PAPER NUMBER     |

3652

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 01/08/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/693,617

Applicant(s)

BARES ET AL.

Examiner

Donald Underwood

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/16/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 19, 20 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 16-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12, 15, 20 and 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 12, this claim is redundant of claim 9. The phrase "is pivotally mounted to the at least one lift arm," bridging lines 1 and 2 should be canceled. See the amendment to claim 9, lines 4 and 5.

Regarding claim 15, this claim is incomplete. It sets forth a desired result but fails to include the structure that provides the result, i. e., the structure that connects the attachment and arm that prevents a change in relative position.

Regarding claim 20, the commas in lines 3 and 4 with hyphens above them render these claims indefinite. Further --a-- should be inserted before "solid" in line 5.

Regarding claims 23 and 26, these claims are directed to applicants' species in figure 10 while parent claim 20 is directed to the species in figure 3. Claims 23 and 26 are thus indefinite since they contradict claim 20.

Regarding claim 25 and 27, "the loader" in line 2 and bridging lines 4 and 5 in claim 25 and bridging lines 2 and 3 in claim 27 lacks a clear antecedent basis rendering the claims indefinite.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 5, 8 and 20 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Richey.

Regarding claim 8, note link 35 and the support which is the connections for 35 and 26 at the bucket.

Applicants' arguments have been carefully considered but are not deemed persuasive since the claims do not claim the loader but the attachment and link included in Richey. Note links 35 in Richey are solid links and they are attached to the loader frame. The claims do not preclude links 36 in Richey.

Claim 4 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rohrbaugh or newly cited Langenfeld, et al.

Regarding Rohrbaugh, see figure 10 where actuator 80 is connected at the cylinder end to an arm and at the rod end to a link. The attachment support connects 43 and the arm, i. e., the attachment support is cylinder 82 and the link attached thereto between 43 and the arm.

Regarding Langenfeld, see figure 2 where cylinder 54 is connected between link 18 and arm 14.

Claims 9, 10, 11, 13, 14, 15, 20 and 22-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by British reference 757,638.

Note arm 11, rear attachment at 16 and link 18.

Regarding claim 21, note the support containing pivot 16.

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Regarding claims 23 and 26, these claims are directed to an unclaimed loader structure and can not serve as a basis for patentability.

Applicants' arguments have been carefully considered but are not deemed persuasive since link 18 in the British reference is attached to the frame.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richey in view of Weight.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an auger to the bucket in Richey to enhance discharge of material in view of the teaching in Weight.

Regarding claim 6, the auger could be used to mix cement.

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Claims 19 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over British reference 757,638 in view of Pittman.

It would have been obvious to provide a bumper on the bucket in the British reference to ease shock when the bucket is moved rearwardly in view of the teaching in pittman (element 76).

Claims 16, 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Underwood whose telephone number is 571-272-6933. The examiner can normally be reached on Mon-Thursday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Donald Underwood* 01/04/07  
Donald Underwood  
Primary Examiner  
Art Unit 3652

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